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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,618	02/06/2004	Henry L. Ashwood JR.		5075

7590 02/23/2005

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EXAMINER

JACKSON, ANDRE L

ART UNIT PAPER NUMBER

3677

DATE MAILED: 02/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/772,618

Applicant(s)

ASHWOOD, HENRY L.

Examiner

Andre' L. Jackson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-13 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

This application contains claims directed to the following patentably distinct species of the claimed invention:

Species I is described in claim 1 as “model #1” under sub-heading (a) which corresponds to Figs. 1-3 of applicant’s drawings.

Species II is described in claim 1 as “model #2” under sub-heading (b) which corresponds to Fig. 7 of applicant’s drawings.

Species III is described in claim 1 as “model #3” under sub-heading (c) which corresponds to Figs. 4-6 of applicant’s drawings.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 5-13 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

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Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

A telephone call was made to applicant on February 4, 2004 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

(The basis for this requirement is because applicant includes three distinct embodiments recited in the base claim. Applicant is reminded that an application is prosecuted based on one invention per application).

Manner of Response to the Office Action

35 U.S.C § 1.33 discloses that a shortened statutory period for response to an Office Action is set to expire three months from the date of the Office Action. Failure to respond within the period for response will cause the application to become abandoned. Therefore, Applicant must respond to all grounds of objection and rejection within three months. That response must include a response to each objection and rejection.

A proper response to an Office Action should include:

Instructions to cancel or amend the rejected claims or to substitute, or to add claims to be considered by this Office (see the Manner of Making Amendments below for instructions on how to amend an application);

Acknowledgement of objections to the drawing and/or specification by:

Specific instructions to correct these defects, or Requesting that these objections be held in abeyance until allowable subject is indicated.

Applicant should further submit an argument under the heading "Remarks" in which the applicant points out where the applicant disagrees with the examiner's contentions and wherein the applicant also discusses the references applied against the claims, explaining how the claims avoid these references or how they distinguish from them in a patentable sense.

Note that while an application can be amended to make it clearly understandable, no subject matter can be added that was not disclosed in the application as originally filed.

37 CFR § 1.121 Manner of Making Amendments

Amendments to the Specification

Amendments to the specification are made by providing instructions that unambiguously identify the location or locations, to delete one or more paragraphs of the specification, replace a deleted paragraph with one or more replacement paragraphs, or add one or more paragraphs. Any replacement paragraph(s) must include markings to indicate the changes that have been made. The changes may be shown by brackets (for deleted matter) or underlining (for added matter), or by any equivalent marking system. A marked up version does not have to be supplied for a

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completely newly added paragraph or a deleted paragraph, without a replacement, as it is sufficient to state that a particular paragraph has been added, or deleted.

Additionally, applicant may amend the entire specification, excluding the claims, by the filing of a substitute specification. Applicant must provide instruction to replace the specification and a substitute specification in compliance with § 1.125(b).

Applicant must also submit another version of the substitute specification, separate from the substitute specification, marked up to show all changes relative to the previous version of the specification. The changes may be shown by brackets (for deleted matter), or underlining (for added matter), or by any equivalent marking system.

Amendments to the Claims

Amendments to the claims must be made by submitting a complete listing of all claims in the application. After each claim number, the status must be indicated in a parenthetical expression, and the text of each claim under examination (with markings to show current changes) must be presented. The listing will serve to replace all prior versions of the claims in the application.

(1) The current status of all of the claims in the application, including any previously canceled or withdrawn claims, must be given. Status is indicated in a parenthetical expression following the claim number by one of the following: (original), (currently amended), (previously amended), (canceled), (withdrawn), (new), (previously added), (reinstated- formerly claim #), (previously reinstated), (re-presented- formerly dependent claim#), or (previously re-presented).

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The text of all pending claims under examination must be submitted each time any claim is amended. Canceled and withdrawn claims should be indicated by only the claim number and status.

(2) All claims being currently amended must be presented with marking to indicate the changes that have been made relative to the immediate prior version. The changes in any amended claim should be shown by strikethrough (for deleted matter) or underlining (for added matter). An accompanying clean version is not required and should not be presented. Only claims of the status “currently amended” will include markings.

(3) The text of pending claims not being amended must be presented in clean version, i.e., without any markings. Any claim text presented in clean version will constitute an assertion that it has not been changed relative to the immediate prior version.

(4) A claim may be canceled by merely providing an instruction to cancel. Listing a claim as canceled will constitute an instruction to cancel. Any claims added by amendment must be indicated as (new) and shall not be underlined.

(5) All of the claims in each amendment paper must be presented in ascending numerical order. Consecutive canceled or withdrawn claims may be aggregated into one statement (e.g., Claims 1-5 (canceled))

Examples of listing of claims (use of the word “claim” before the claim number is optional):

Claims 1-5 (canceled)

Claim 6 (withdrawn)

Claim 7 (previously amended): A bucket with a handle.

Claim 8 (currently amended): A bucket with a -g-r-e-e-n- blue handle.

Claim 9 (withdrawn)

Claim 10 (original): The bucket of claim 8 with a wooden handle.

Claim 11 (canceled)

Claim 12 (re-presented- formerly dependent claim 11): A black bucket with a wooden handle.

Claim 13 (previously added): A bucket having a circumferential upper lip.

Claim 14 (new): A bucket with plastic sides and bottom.

Amendments to the Drawings

Application drawings are amended in the following manner: Any change to the application drawings must be submitted on a separate paper labeled as "Replacement Sheet" and must include all of the figures on the original sheet unless that figure is being deleted. An explanation of the any changes that are made to the drawings must be provided in writing.

In all instances, deleted matter may be reinstated only by a subsequent amendment presenting the previously deleted matter.

No new matter may be added to the specification or claims by way of amendment. Once an application has been filed, it is improper to add subject matter not disclosed in the original specification, claims, or drawings.

Extension of Time Practice

37 CFR § 1.136(a) permits an applicant to file a petition for extension of time and a fee as in 37 CFR § 1.17(a), (b), (c), or (d) up to three months after the end of the time period set to take action except (1) where prohibited by statute, (2) in interference proceedings, or (3) where applicant has been notified otherwise in an Office Action. The petition and fee must be filed within the extended time period for response requested in the petition and can be filed prior to or with the response. The filing of the petition and fee will extend the time period to take action up to three months dependent on the amount of the fee paid except in those circumstances noted above. 37 CFR § 1.136(a) will effectively reduce the amount of paperwork required by the applicants and the Office since the extension will be effective upon filing of the petition and payment of the appropriate fee and without acknowledgement or action by the Office and since the petition and fee can be filed with the response.

The statute at 35 U.S.C. § 41(a)(8) requires the filing of a petition to extend the time and the appropriate fee. Such a petition need not be in any required format. A proper petition may be a mere sentence such as

The applicant herewith petitions the Commissioner of Patents and Trademarks to extend the time for response to the Office Action dated __ for __ month(s); to cover the cost of the extension, please charge my deposit account number __ in the amount of __.

Any deficiency or overpayment should be charged or credited to the above numbered deposit account.

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The charges set forth for small entity time extensions are as follows:

Extension for response within first month	-	\$ 55.00
Extension for response within second month	-	\$200.00
Extension for response within third month	-	\$460.00

Certificate of Mailing Practice

It is called to applicant's attention that if a communication is mailed before the response time has expired applicant may submit the response with a "Certificate of Mailing" in accordance with 37 CFR § 1.8(a) which merely asserts that the response is being mailed on a given date. So mailed, before the period for response has lapsed, the response is considered timely. The following is a suggested format for the certificate of mailing under 37 CFR § 1.8(c) that should be included with all correspondence.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231, on _____

Name of applicant, assignee, or Registered Representative

Signature _____

Date _____

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37 CFR § 1.8 and the suggested form for patent cases established a practice before the Patent and Trademark Office which is referred to as the "Certificate of Mailing Procedure."

Under this procedure, a person may state on certain papers directed

to the Office (exceptions are stated in 37 CFR § 1.8), the date on which the paper will be deposited in the United States Postal Service. If the date of deposit is within the period for response, the response in most instances will be considered to be timely.

This is true even if the paper does not actually reach the Office until after the end of the period for response. The Certificate of Mailing procedure does not apply to papers mailed in a foreign country.

It should be noted, however, that the Office will continue its normal practice of stamping the date of receipt (Mail Room Stamp) on all papers received through the mails except those filed under 37 CFR § 1.10. The date stamped will also be the date which is entered on Office records and from which any subsequent periods are calculated. For example, 37 CFR § 1.192 gives appellant 2 months from the date of the appeal to file an appeal brief. For example, if the last day to respond to a final rejection was November 10, 1976, and applicant deposited a Notice of Appeal with fee in the U.S. Mail on November 10, 1976 and so certified, that appeal is timely even if it was not received in the Patent and Trademark Office until November 17, 1976. Since the date of receipt will be used to calculate the time at which the brief is due, the brief was due on January 17, 1977. This is 2 months after the Mail Room date.

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It would be of great assistance to the Office if all incoming papers pertaining to a filed application carried the following items:

Serial number (checked for accuracy).

Group art unit number (copied from filing receipt or most recent Office Action).

Filing date.

Name of the examiner who prepared the most recent Office action.

Title of invention.

Conclusion

Applicant is reminded that a 1 (one) month shortened statutory period is set for reply to this Action. This period may be extended under the provisions of 37 CFR 1.136(a).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andre' L. Jackson whose telephone number is (703) 605-4276. The examiner can normally be reached on Mon. - Fri. (10 am - 6 pm).

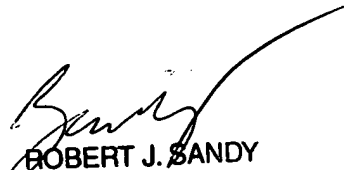
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy J. Swann can be reached on (703) 306-4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Andre' L. Jackson
Patent Examiner
AU 3677

ALJ



ROBERT J. SANDY
PRIMARY EXAMINER